

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARY A. WINTER)	
Claimant)	
VS.)	
)	Docket No. 217,356
BANK IV)	
Respondent)	
AND)	
)	
FIREMAN'S FUND INSURANCE)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order of Administrative Law Judge Kenneth S. Johnson dated October 6, 1997, wherein Judge Johnson found claimant had provided timely notice and accidental injury arising out of and in the course of her employment with respondent.

ISSUES

- (1) Whether claimant suffered accidental injury arising out of and in the course of her employment with respondent on the date or dates alleged.
- (2) Whether claimant gave notice pursuant to K.S.A. 44-520.
- (3) If claimant failed to give notice within 10 days pursuant to K.S.A. 44-520 whether just cause existed for said failure.
- (4) The appropriate date of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant alleges accidental injury on June 10, 1996, and a series of mini-traumas through July 22, 1996, while employed with respondent. Claimant's injury to her low back is the same area of the body in which claimant had surgery in 1995. Claimant had been returned to work at an accommodated position with restrictions in February 1996 by Dr. Paul S. Stein, the surgeon who performed the original surgery.

Claimant currently alleges that on June 10, 1996, she lifted a bag of nickels and then lifted a bag of pennies off the floor. Claimant suffered no symptoms at that time. However, a few days later her back began to bother her and she noticed increased symptomatology from that point through the third week of July 1996. Claimant alleges she discussed her back symptomatology with several of her co-employees and supervisors. However, she cannot verify the dates or times of these conversations. Respondent acknowledges claimant had a discussion with Charlene (Becky) Classen, human resources officer for the respondent, shortly before July 4, 1996. At that time, Ms. Classen asked if claimant had hurt her back. Claimant indicated she did not think she had hurt her back but had become lax with bending, lifting, and walking the stairs in a correct manner.

Claimant underwent a medical examination with Dr. David Edwards in Liberal, Kansas, on July 3, 1996. At that time claimant indicated ongoing back symptomatology but failed to report any work-related connection with this problem. Respondent does acknowledge claimant advised respondent on or about July 17 or July 19, 1996, that she suffered a back-related injury and that it was related to an incident occurring on June 10, 1996. Claimant had a medical examination with Dr. Stein on July 22, 1996, and for the first time advised Dr. Stein that her symptoms began when she picked up a box of nickels on June 10, 1996. Claimant advised Dr. Stein that, at that time, she experienced burning and discomfort in her right hip and leg.

An MRI performed at Dr. Stein's request on July 17, 1996, indicated a broad-based protrusion at L5-S1 which is the sight of claimant's December 1995 surgery. Dr. Stein diagnosed a disc recurrence at L5-S1 on the right side. On August 5, 1996, a second surgery to correct this L5-S1 disc herniation was performed.

In proceedings under the Workers Compensation Act the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). See *also Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).

In order for a claimant to collect workers compensation benefits under the Kansas Workers Compensation Act she must suffer an accidental injury arising out of and in the course of her employment. The phrase "out of employment" points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of employment" when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is to be performed and the resulting injury. An injury

arises “out of employment” if it arises out of the nature, conditions, obligations, and incidents of employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase “in the course of” employment relates to the time, place, and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his or her employer’s service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984).

In this case, claimant describes two different circumstances under which she alleges injury. There was a specific incident alleged on June 10, 1996, when claimant lifted a bag of nickels and a bag of pennies, neither of which caused her an onset of pain at that time. Claimant then alleges her back began to hurt her several days later. Claimant also alleges that she suffered a series of accidental injuries when she became lax with bending, lifting, and walking the stairs in a correct manner. It is significant that claimant’s lifting was severely restricted at her employment due to the prior surgery to her low back in December 1995. Personal injury is defined as any lesion or change in the physical structure of the body causing damage or harm thereto so that it gives way under the stress of the worker’s usual labor. See K.S.A. 44-508(e). The Appeals Board cannot find that the events described by claimant constitute personal injury by accident arising out of and in the course of her employment.

As such, the Appeals Board finds claimant has failed to prove accidental injury arising out of and in the course of her employment with respondent on the date or dates alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth S. Johnson dated October 6, 1997, should be, and is hereby, reversed, and claimant is denied benefits for the accidental injuries alleged.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

c: Steve Brooks, Liberal, KS
Richard A. Boeckman, Great Bend, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director